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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.    | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------|------------------|
| 10/574,457   | 04/04/2006  | John Carroll         | P06958US0              | 9728             |
| 34082  | 7590        | 01/05/2010           | EXAMINER               |                  |
| ZARLEY LAW FIRM P.L.C.<br>CAPITAL SQUARE<br>400 LOCUST, SUITE 200<br>DES MOINES, IA 50309-2350 |             |                      | WATKINS III, WILLIAM P |                  |
|  |             | ART UNIT             | PAPER NUMBER           |                  |
|  |             | 1794                 |                        |                  |
|  |             | MAIL DATE            | DELIVERY MODE          |                  |
|  |             | 01/05/2010           | PAPER                  |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/574,457             | CARROLL, JOHN       |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | William P. Watkins III | 1794                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 October 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6,8-13 and 18-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6, 8-13 and 18-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 October 2009 has been entered.
2. The objection given in section 2 of the office action mailed 21 July 2009 is withdrawn in view of applicant's cancellation of the subject matter which was subject to objection. The art rejections given in sections three and four of the office action mailed 21 July 2009 are withdrawn in view of applicant's arguments and claim amendments filed 20 October 2009. Modified grounds of rejection are given below.
3. Claims 1-3, 6, 8-12 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laaksonen (WO 03/041525 A1) in view of Rayfield et al. (U.S. 4,242,769) further in view of Labish (U.S. 6,829,795).

Laaksonen teaches a foam layer with slits to allow breath-ability that is joined to a fabric layer and can be used in flotation devices (abstract, page 4, first paragraph). Rayfield et al. teaches the use of a breathable water impermeable fabric as an outer layer in a floatation device (col. 1, line 65 through col. 2, line 20). Labish teaches the

use of a slip layer between a foam and outer cover layer in order to allow relative movement so that the outer cover layer will better fit the foam layer. The instant invention claims a foam layer with slits next to a breathable waterproof fabric and a slip layer between an outer layer and an inner foam layer. It would have been obvious to one of ordinary skill in the art to have used a waterproof breathable fabric as the fabric of Laaksonen in order to protect the user of the jacket from moisture because of the teachings of Rayfield et al. It further would have been obvious to one of ordinary skill in the art to have used a slip layer between the outer fabric layer and foam layer of Laaksonen in view of Rayfield et al. in order to allow relative movement between the outer and foam layers because of the teachings of Labish.

4. Claims 4-5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laaksonen (WO 03/041525 A1) in view of Rayfield et al. (U.S. 4,242,769) further in view of Labish (U.S. 6,829,795 B2) as applied to claims 1-3, 6-12 and 14 above, and still further in view of Tsai (GB 2 312 643 A).

Tsai teaches the use of "Y", "V" and other slit patterns that allow breath-ability in foam layers (see Figures 1-3). The instant invention claims foam layers with various slit patterns that allow breath-ability. It would have been obvious to one of ordinary skill in the art to have used various cross type slit patterns in the foam layer of Laaksonen in view of Rayfield still further in view of Labish in order to optimize the breath-ability for a given application because of the teachings of Tsai.

5. Applicant's arguments filed 20 October 2009 are moot in view of the modified grounds of rejection given above. The modified grounds of rejection address the new "slip layer" limitation in the instant claims.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WW/ww  
January 5, 2010

/William P. Watkins III/  
Primary Examiner, Art Unit 1794

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